

HOUSE No. 350

By Ms. Callahan of Sutton, petition of Jennifer M. Callahan and others relative to the penalties for unauthorized access to computers. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

Jennifer M. Callahan
Barbara A. L'Italien

Bruce E. Tarr

In the Year Two Thousand and Seven.

AN ACT PROVIDING FOR THE CONTROL OF SPYWARE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 21. (1) as used in this section the following terms shall
- 2 have the following meanings:—
- 3 “Context based triggering mechanism” a software based trigger
- 4 or program residing on a consumer's computer that displays and
- 5 advertising according to:
 - 6 (a) the current internet website accessed by a user or
 - 7 (b) The contents or characteristics of the current internet web-
 - 8 site accessed by a user
- 9 “Department” the department of telecommunications and
- 10 energy
- 11 “Internet” as defined in the Internet Tax Freedom Act Public
- 12 Law 105-277
- 13 “Spyware” except as provided in subsection 151 software
- 14 residing on a computer that
 - 15 (a) monitors the computer's usage
 - 16 (b) (i) sends information about the computer's usage to a
 - 17 remote computer or server or
 - 18 (ii) displays or causes to be displayed an advertisement in
 - 19 response to the computer' usage of the advertisement

- 20 (a) does not clearly identify the full legal name of the entity
21 responsible for delivering the advertisement
22 (b) uses a federally registered trademark as a trigger for the
23 display of the advertisement by a person other than:
24 (I) the trademark owner
25 (II) and authorized agent or licensee of the trademark owner
26 or
27 (III) a recognized internet search engine
28 (c) uses a triggering mechanism to display the advertisement
29 according to the internet website accessed by a user or
30 (d) uses a context based triggering mechanism to display the
31 advertisement that partially or wholly covers or obscures
32 paid advertising or other content on an internet website in a
33 way that interferes with a user's ability to view the internet
34 website
35 (c) does not:
36 (i) obtain the consent of the user, at the time of, or after instal-
37 lation of the software but before the software does any of
38 the actions described in subsection 4 to b:
39 (A) to a license agreement:
40 (I) presented in full and
41 (II) written in plain language
42 (B) to a notice of the collection of each specific type of infor-
43 mation to be transmitted as a result of the software installa-
44 tion;
45 (C) to a clear and representative full-size example of each type
46 of advertisement that may be delivered;
47 (D) to a truthful statement of the frequency with each type of
48 advertisement that may be delivered and
49 (E) for each type of advertisement delivered by the software, a
50 clear description of a method by which a user may distin-
51 guish the advertisement by its appearance from an adver-
52 tisement generated by other software services, and provide
53 a method:
54 (A) by which a user may quickly and easily disable and remove
55 the software from the user computer
56 (B) that does not have any other effects on the non-affiliated
57 parts of the user's computer and
58 (C) that uses obvious, standard, usual and ordinary method for
59 removal of computer Spyware shall not include:

- 60 (A) software designed and installed solely to diagnose or
61 resolve technical difficulties;
62 (B) software or data that solely report to an internet website
63 information previously stored by the internet website on
64 the user's computer including:
65 (i) cookies
66 (ii) HTML code; or
67 (iii) Java Scripts; or
68 (c) an operating system.
69 (6) "Usage" means:
70 (a) the internet websites accessed by a user;
71 (b) the contents or characteristics of the internet websites
72 accessed by a user;
73 (c) a user's personal information, including:
74 (i) a first and last name of a user, whether:
75 (A) given at birth or adoption;
76 (B) assumed; or
77 (C) legally changed;
78 (ii) any of the following with respect to a user's home or other
79 physical address:
80 (A) the street name;
81 (B) the name of the city or town; or
82 (C) the zip code;
83 (iii) an electronic mail address;
84 (iv) a telephone number;
85 (v) a social security number;
86 (vi) any personal identification number;
87 (vii) a credit card number
88 (viii) any access code associated with a credit card;
89 (ix) a date of birth, birth certificate number, or place of birth;
90 or
91 (x) a password or access code; or
92 (d) a user's submission to forms or internet websites.
93 (7) "User" means:
94 (a) a computer owner; or
95 (b) a person who accesses an internet website.
96 A person may not:
97 (a) install spyware on another person's computer
98 (b) cause spyware to be installed on another person's com-
99 puter or

100 (c) use a context based triggering mechanism to display an
101 advertisement that partially or wholly covers or obscures
102 paid advertising or other content on an internet website in
103 a way that interferes with a user's ability to view the
104 internet website.

105 It shall not be a defense to a violation of this section that a user
106 may remove or hide the advertisement.

107 An action for a violation of this section may be brought against
108 a person who violates this chapter or causes a violation in viola-
109 tion of this section by any of the following who are adversely
110 affected by such violation:

111 (a) an internet website owner or registrant

112 (b) a trademark or copyright owner

113 (c) an authorized advertiser on an internet website

114 If an action under this section, a person may obtain an injunc-
115 tion against any further violations and recover the greater of
116 actual damages or \$10,000 for each separate violation.

117 A court may increase such damages 3 times if it finds the
118 defendant willfully or knowingly violated this section and may
119 award costs and reasonable attorney fees to a prevailing party.

120 For the purposes of this section a separate violation occurs for
121 each occurrence that results in the display of an advertisement.

122 A person may not bring an action for a violation of this section
123 against an internet service provider for the routine transmission of
124 security information or information that contains an advertisement
125 violating this section.

126 The department shall establish procedures by which a person
127 may report a violation of this section to the department including
128 an internet website and a toll-free telephone number.